

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES J. HAYES, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

HARMONY GOLD MINING COMPANY
LIMITED, BERNARD SWANEPOL, and
NOMFUNDO QANGULE

Defendants.

Electronically Filed

No. 1:08-cv-03653-BSJ-MHD

(ECF Case)

**MOTION OF JAMES J. HAYES TO BE APPOINTED LEAD PLAINTIFF
AND FOR APPROVAL OF LEAD PLAINTIFF'S SELECTION
OF LEAD COUNSEL AND LIAISON COUNSEL**

PLEASE TAKE NOTICE that class member James J. Hayes (“Hayes”), by his counsel, will hereby move this Court, on a date and at such time as may be designated by the Court, for an Order: (i) appointing Hayes as Lead Plaintiff; (ii) approving Hayes’s selection of the law firm of Schiffrin Barroway Topaz & Kessler, LLP to serve as Lead Counsel; (iii) approving Hayes’s selection of the law firm of Brodsky & Smith, LLC to serve as Liaison Counsel; and (iv) granting such other and further relief as the Court may deem just and proper. In support of this motion, Hayes submits herewith a Memorandum of Law and Declaration of Evan J. Smith.

Dated: June 16, 2008

Respectfully submitted,

BRODSKY & SMITH, LLC

By: /s/ Evan J. Smith, Esquire (ES3254)

Evan J. Smith (ES3254)

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Proposed Lead Counsel

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**[PROPOSED] ORDER APPOINTING LEAD PLAINTIFF AND APPROVING
LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL AND LIAISON COUNSEL**

Having considered the motion of class member James J. Hayes to be appointed Lead Plaintiff and for approval of Lead Plaintiff's selection of Lead Counsel and Liaison Counsel, the memorandum of law in support thereof, the declaration of Evan J. Smith in support of that motion, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The motion is granted.
2. James J. Hayes is appointed to serve as Lead Plaintiff in the above-captioned action pursuant to 15 U.S.C. § 78u-4(a)(3)(B).
3. The law firm of Schiffrin Barroway Topaz & Kessler, LLP is hereby approved as Lead Counsel for the Class. Lead Counsel shall provide general supervision of the activities of plaintiff's counsel and shall have the following responsibilities and duties to perform or delegate as appropriate:
 - a. To brief and argue motions;
 - b. To initiate and conduct discovery, including, without limitation, coordination of discovery with defendants' counsel, the preparation of written interrogatories, requests for admissions, and requests for production of documents;
 - c. To direct and coordinate the examination of witnesses in depositions;
 - d. To act as spokesperson at pretrial conferences;
 - e. To call and chair meetings of plaintiffs' counsel as appropriate or necessary from time to time;
 - f. To initiate and conduct any settlement negotiations with counsel for defendants;

g. To provide general coordination of the activities of plaintiffs' counsel and to delegate work responsibilities to selected counsel as may be required in such a manner as to lead to the orderly and efficient prosecution of this litigation and to avoid duplication or unproductive effort;

h. To consult with and employ experts;

i. To receive and review periodic time reports of all attorneys on behalf of plaintiffs, to determine if the time is being spent appropriately and for the benefit of plaintiffs, and to determine and distribute plaintiffs' attorneys' fees; and

j. To perform such other duties as may be expressly authorized by further order of this Court.

4. The law firm of Brodsky & Smith, LLC is hereby approved as Liaison Counsel for the Class.

IT IS SO ORDERED.

DATED: _____

The Honorable Michael H. Dolinger
United States Magistrate Judge